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8 STATES OF AMERICA

9                  UNITED STATES DISTRICT COURT  
10                  NORTHERN DISTRICT OF CALIFORNIA  
11                  SAN FRANCISCO DIVISION

12 JOHN STASSEN,                  ) CASE NO. 17-cv-05869 LB  
13                  )  
14                  Plaintiff,                  ) **JOINT CASE MANAGEMENT CONFERENCE**  
                        ) **STATEMENT; [PROPOSED] ORDER**  
15                  v.                  ) Date: February 22, 2018  
16                  ) Time: 11:00 a.m.  
17                  ) Honorable Laurel Beeler  
UNITED STATES OF AMERICA,                  )  
Defendant.                  )  
\_\_\_\_\_ )

18  
19                  The parties to the above-captioned action jointly submit the following Joint Case Management  
20 Conference Statement.

21                  1. **JURISDICTION AND SERVICE:** All defendants have been served and have appeared.  
22 This Court has jurisdiction over plaintiff's Federal Tort Claims Act claims under 28 U.S.C. § 1346(b).

23                  2. **FACTS:**

24                  Plaintiff alleges that, on May 27, 2016, he had a bicycle accident on the pathway that runs along  
25 the waterfront of San Francisco Maritime National Historical Park. Plaintiff alleges that the accident  
26 was caused by railroad tracks that are blended into the pathway, but which had become exposed because  
27 of a deterioration of the pavement adjacent to the track. Plaintiff alleges that he was seriously injured in  
28 the accident, including causing a right pneumothorax.

1       The United States notes that the exposed, historical State Belt Line railroad tracks, which ran  
2 along the promenade at Aquatic Park, were incorporated into the park by design. The National Park  
3 Service chose to preserve these tracks in light of their historic and cultural significance. That said, at the  
4 time of plaintiff's accident, the tracks were slated to be removed, and were subsequently removed.

5       **3. LEGAL ISSUES:**

6       Plaintiff's Statement of Legal Issues in Dispute.

- 7       1) Whether defendant is liable for plaintiff's damages pursuant to the Federal Tort Claims  
8                   Act, 28 U.S.C. §§ 2671 *et seq.*

9       Defendant's Statement of Legal Issues in Dispute.

- 10      1) Whether California's doctrine of recreational use immunity bars plaintiff's claims. Cal.  
11                  Civ. Code § 846.
- 12      2) Whether the discretionary function exception to the Federal Tort Claims Act bars plaintiff's  
13                  claims. 28 U.S.C. § 2680(a).

14       **4. MOTIONS:** No motions are currently pending. The parties reserve their rights to bring all  
15 appropriate motions.

16       **5. AMENDMENT OF PLEADINGS:** The parties suggest an amendment deadline of May 31,  
17 2018.

18       **6. EVIDENCE PRESERVATION:** The parties will take all necessary steps to preserve  
19 evidence, including electronically stored data.

20       **7. DISCLOSURES:** The parties will exchange initial disclosures by March 9, 2018.

21       **8. DISCOVERY:** No discovery has yet taken place. No alterations to the Federal Rules are  
22 proposed.

23       **9. CLASS ACTIONS:** This is not a class action.

24       **10. RELATED CASES:** None.

25       **11. RELIEF:** Plaintiff prays for relief as described in his complaint; defendant prays that he  
26 take nothing.

27       **12. SETTLEMENT AND ADR:** The parties have not yet had any settlement discussions. The  
28 parties request that they be referred to a settlement conference with a magistrate judge, to occur after

1 some initial discovery (about five months out).

2       **13. CONSENT TO A MAGISTRATE JUDGE FOR ALL PURPOSES:** All parties have  
3       consented to proceed before a magistrate judge.

4      14. OTHER REFERENCES: None requested.

5       **15. NARROWING OF ISSUES:** The parties stipulate that the First Cause of Action  
6 (Dangerous Condition of Public Property) should be dismissed without prejudice. The cause of action  
7 for negligence will remain.

8 | 16. EXPEDITED TRIAL PROCEDURE: Not applicable.

9       **17. SCHEDULING:** The complaint in this matter was filed on October 12, 2017; the United  
10 States was served on November 17, 2017; and answered on January 16, 2018. The parties request a  
11 settlement conference with a magistrate judge to occur in August or September 2018. If the Court is  
12 inclined to set a trial date at this juncture, the parties request a trial date in April or May 2019.

13           **18. TRIAL:** There is no right to trial by jury under the Federal Tort Claims Act. *See* 28 U.S.C.  
14           § 2402.

15       **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES/PERSONS:** Nothing to  
16 disclose. Local Rule 3-15 does not apply to governmental entities, such as the United States, or their  
17 agencies.

18       **20. PROFESSIONAL CONDUCT:** The parties have reviewed the Guidelines for Professional  
19 Conduct for the Northern District of California.

21 | DATED: February 8, 2018

Respectfully submitted,

ALEX G. TSE  
Acting United States Attorney

/s/ Wendy M. Garbers  
WENDY M. GARBERS  
Assistant United States Attorney  
Attorneys for the UNITED STATES

1 DATED: February 8, 2018

EMERGENT LLP

2 By: /s/ Seth I. Rosenberg\*  
3 SETH I. ROSENBERG

4 Attorney for PLAINTIFF

5 \*In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury  
that each signatory has concurred in the filing of this document.

7 **[PROPOSED] ORDER**

8 PURSUANT TO STIPULATION, plaintiff's First Cause of Action (Dangerous Condition of  
9 Public Property) is hereby dismissed without prejudice, each side to bear their own costs and attorneys'  
10 fees.

11 IT IS SO ORDERED

12 Dated: February 22, 2018



13  
14 HONORABLE LAUREL BEELER  
15 United States Magistrate Judge Judge  
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